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Tom Evslin, Chief Technology Officer

November 30, 2009

Lawrence E. Strickling, Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Jonathan Adelstein, Administrator
Rural Utilities Service
U.S. Department of Agriculture
1400 Independence Ave. SW
Washington, DC 20250

Re: Joint Request for Information Related to Round 2 BTOP and BIP Funding

Dear Assistant Secretary Strickling and Administrator Adelstein:

I was appointed by Governor Douglas to be Chief Technology Officer. My role is to coordinate technology initiatives, formulate policy on the use of technology by the state and other technology opportunities for Vermont including broadband stimulus opportunities. I am pleased to submit these comments on behalf of the State. This response will address a number of the specific questions contained within the Joint Request for Information issued by the Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA) and published in the Federal Register on November 16, 2009.

Should the agencies re-examine the use of a single application for applicants applying to both BIP and BTOP to fund infrastructure projects?

No. The use of a single application was a positive element of the first round that should be preserved. It demonstrated admirable cooperation between NTIA and RUS.

How should NTIA link broadband infrastructure, public computer center and sustainable adoption projects through the application process?

The NTIA should allow applicants for infrastructure funding to submit a supplemental linked application for sustainable adoption funding. However, the NTIA should seek a demonstration from applicants of how linked sustainable adoption funding will decrease the need for infrastructure funding by increasing or accelerating the take rate for broadband services and therefore the number of paying customers supporting an infrastructure project.

RUS and NTIA are presently reviewing joint applications consistent with the process set forth in the NOFA. Should these kinds of rural infrastructure applications continue to be required to be submitted to RUS or should the agencies permit rural applications to be submitted directly to NTIA, without having to be submitted to RUS as well, and if so, how should NTIA and RUS proceed in a manner that rewards the leveraging of resources and the most efficient use of Federal funds?

Requiring rural applications to be submitted to the RUS is reasonable. However, in the first round, differences in the way RUS and NTIA made available grant funding presented some unnecessarily awkward decisions for rural applicants. Especially problematic was the fact that for non-remote applications, the RUS would only consider grant amounts up to the amount of RUS loan requested (in essence, a maximum of 50% grant), while the NTIA would provide up to 80% grant, but no loan. Rural applicants requiring more than 50% grant funding were required to submit applications designed to fail the RUS screen in order to be considered by NTIA. These rules created confusion regarding whether such an applicant should submit a request to RUS for grant funding in excess of 50%, which fell outside of the BIP rules for eligibility, or submit a request for only 50% RUS funding, which could mean proposing an unsustainable project.

Instead, we recommend that

- RUS permit BIP applications for up to 80% grant funding in non-remote areas. (The RUS, could, however, give weight in scoring criteria for applications which seek lower grant funding amounts.)
- RUS not tie the level of grant funding available to the amount of loan funding sought. This will provide applicants more flexibility in combining federal and non-federal funding sources. For example, a rural applicant could seek 50% grant funding from either the RUS and NTIA, and 50% from non-federal sources. Under the Round 1 NoFA, the rural applicant could only ask for 50% grant funding by also asking for 50% BIP loan funding, but would not be able to obtain similar loan funding from the NTIA.
- RUS should permit rural applicants to seek loan guarantees as well as loans, as ARRA empowers RUS to do.

During the first round of funding, NTIA utilized panels of at least three independent reviewers to evaluate BTOP applications. A number of stakeholders have questioned whether this is the most effective approach to evaluating BTOP applications. To further the efficient and expeditious disbursement of BTOP funds, should NTIA continue to rely on unpaid experts as reviewers? Or, should we consider using solely Federal or contractor staff?

The use of unpaid volunteers has the potential to raise serious questions about the quality of the review and the potential motivations of some reviewers who are not receiving compensation. Many otherwise qualified reviewers are also likely to be involved in the preparation of applications. The slipping of the originally-announced timetable for award of Round 1 projects and the need to collapse Round 2 of the funding into the later Round 3 illustrate the understandable difficulties for NTIA and RUS in the creation of these large new programs. We repeat the earlier support of the State of Vermont[1] for the NARUC-sponsored proposal to create

[1] Recommendations of the Massachusetts Broadband Institute, Massachusetts Department of Telecommunications and Cable, and the Vermont Department of Public Service filed April 13, 2009, in response to the Joint Request for Information issued by the National Telecommunications and Information Administration and the Rural Utilities Service and printed in the Federal Register on March 12, 2009, page 2.

a mechanism for willing states to perform an initial screening and funding recommendation of proposals made in their states, subject to final RUS and NTIA approval.

Should RUS and/or NTIA focus on or limit round 2 funding on projects that will deliver middle mile infrastructure facilities into a group of communities and connect key anchor institutions within those communities?
While there should be a significant place in round 2 for these types of projects, in many areas there will continue to be a critical need for support of last mile projects.

Should we give priority to those middle mile projects in which there are commitments from last mile service providers to use the middle mile network to serve end users in the community?

NTIA and RUS should provide priority to middle mile projects in which there are commitments from last mile service providers or which will be useable by last mile service providers and provide direct connections to community anchor institutions.

Should RUS and/or NTIA allocate a portion of the remaining funds available under the BIP and BTOP programs to promote a regional economic development approach to broadband deployment?

While this approach has some attractive elements, we believe that it would likely require a burdensome and time-consuming effort to document and demonstrate the types of benefits described. This would present a significant barrier to the preparation of timely applications, especially in small and rural communities.

Should NTIA shift more BTOP funds into public computer centers than is required by the Recovery Act?

No. We believe the more urgent need is for adequate funding for infrastructure. Public computer centers are not an adequate substitute for broadband service which reaches homes, businesses, and community anchor institutions.

In what ways should [the definitions for "unserved area," "underserved area," and "broadband"] be revised?

The way Round 1 definitions of "unserved" and "underserved" were applied to the creation of service areas created some practical difficulties in rural regions like Vermont where more dense village centers are relatively well served, but there are significant parts of the less dense surrounding countryside without service. Often a viable and cost-effective infrastructure last mile project involves the development of broadband infrastructure that also serves a central village core with some level of existing broadband service. While it is reasonable for each last mile project to define a service area composed of census blocks that are "unserved" or "underserved" in the aggregate, as required in Round 1, a request to also fund investments in infrastructure that is nearby and contiguous to the proposed service area should not disqualify the project, especially if the project is applying predominantly for loan and not grant funding. These investments should qualify if they are required for reasons of technical necessity or economic sustainability of the whole project.

Similarly, the development of viable and cost-effective middle-mile projects often involves construction of routes that run through areas with relatively good last mile service. A point of access to a middle mile project in a rural area may be located in a geographically small census block with relatively good last mile service, but

provide important benefits in neighboring census blocks which are geographically larger and less well served. These factors all point to the difficulty of defining qualifying "underserved" areas for middle mile projects on the basis of the availability or penetration of last-mile broadband service. Instead, we recommend that middle-mile project service area be qualified as "underserved" by being able to demonstrate a substantial difference in the availability of bulk-transport (greater than 100 Mbps) services at prices comparable to those available in nearby major metropolitan areas.

How should satellite-based proposals be evaluated against these criteria?

Satellite-based proposals, especially last-mile broadband proposals, do little to improve the existing availability of broadband services. If satellite services were adequate to meet the broadband needs of rural areas, there would be little need for the BIP and BTOP programs as authorized by Congress. Satellite service, and in particular geosynchronous-orbit satellite service, has inherent latency limitations and should not be eligible for funding under these programs.

Should the definition of broadband include a higher speed and should the speeds relate to the types of projects?

Setting an overly high minimum broadband speed for qualifying projects runs the risk that some high-cost areas will be denied any broadband service in the near term. The BTOP and BIP programs should instead continue to encourage and favor projects which are able to deliver higher speeds through points in the scoring criteria.

Should factors other than distance be considered, such as income levels, geographic barriers, and population densities [in defining "remote" areas]?

The significance of this issue will be minimized if the RUS adopts our recommendation to eliminate the 50% grant funding limit for non-remote rural area proposals and instead encourage lower grant levels through scoring criteria.

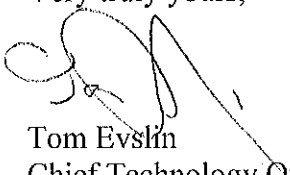
Section VII.B of the NOFA allowed for existing broadband service providers to comment on the applicants' assertions that their proposed funded service areas are unserved or underserved. Some stakeholders have suggested that this rule may reduce incentives for applicants to participate in the BIP and BTOP programs because of the risk that their applications may be disqualified from funding on the basis of information submitted by existing broadband service providers that they have no means to substantiate or rebut. How should the public notice process be refined to address this concern? What alternative verification methods could be established that would be fair to the applicant and the entity questioning the applicant's service area? Should the public notice process be superseded where data becomes available through the State Broadband Data and Development Grant Program that may be used to verify unserved and underserved areas? What type of information should be collected from the entity questioning the service area and what should be publicly disclosed?

The public notice process should be superseded where data becomes available through the State Broadband Data and Development Grant Program. Existing broadband service providers should have every incentive to provide complete and accurate data to this important effort. The public notice process as it was structured in Round 1 provided inadequate opportunities for data provided by existing broadband service providers to be reviewed by staff knowledgeable of local conditions. In contrast, the State Broadband Data and Development

Grant Program requires awardees to verify data and provides a mechanism for review of claims about the levels of broadband service. In addition, if an existing broadband service provider uses broadband adoption data to challenge an application, the NTIA should require that the data be made public, be auditable, and be complete for the state containing the proposed service area the provider is challenging.

In conclusion, I commend the NTIA and RUS for your continued hard work in the implementation of these important programs. I appreciate the opportunity to provide you with these comments.

Very truly yours,



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